

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In re a Search Warrant Issued to  
Google, Inc. on August 24, 2011

File No. 1:11sw454

MEMORANDUM OPINION AND ORDER

In a related file, the government and Google, Inc. have briefed the issue whether the fact of the government's access to a particular Google subscriber's email account should be withheld any longer from the subscriber. In a memorandum opinion and order entered today in 1:11ec56, the court found that there is no longer any legitimate reason to withhold the existence of that access from that subscriber.

The same issue involving the same subscriber and account exists regarding this search warrant.

Following, and adopting the reasoning of, Judge O'Grady's decision in *In re Application of the United States of America for an Order Pursuant to 18 U.S.C. § 2703(d)*, 1:11dm3, 2011 WL 5508991 (November 10, 2011), the court finds that unsealing the entire record relating to the present search warrant is not justified at this time because disclosure of the information contained in the applications and affidavit would jeopardize an ongoing investigation.

However, the court now finds that the government's interest in concluding its investigation no longer outweighs disclosure to the subscriber of the existence of the warrant.

The sole potential problem that notification might create that was raised by the government with specificity has now been eliminated by subsequent events.

The government's remaining, non-specific concern for confidentiality is speculative at best, and not sufficient to meet the government's burden regarding nondisclosure. The existence of the investigation in issue and the government's wide use of warrants, § 2703(d) orders, and other investigative tools has been widely publicized now. It is difficult to imagine circumstances in which this Google subscriber has not assumed government access to this account and acted accordingly.

The court therefore finds that the government no longer meets its burden to prevent Google from notifying its subscriber of the existence of the August 24, 2011 warrant.

It is accordingly

ORDERED that, unless the government appeals from this order within fourteen days, then Google, Inc. may thereafter deliver to its subscriber a copy of the search warrant numbered 1:11sw454, including its Attachment A and the first page but not subsequent pages of its Attachment B, and from which the name of the attesting official has been redacted; but a government appeal shall operate to stay this relief pending further order of the court. The remainder of the record will remain under seal.

Because no confidential information is revealed in the present order, it will not be filed under seal, and the Clerk is directed to open an electronic file with this docket number and to file this order therein.

ENTERED this 28th day of February, 2012.

/s/

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Thomas Rawles Jones, Jr.  
United States Magistrate Judge

Alexandria, Virginia